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No. 76-1700

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

PEOPLE OF THE STATE OF ILLINOIS, *et al.*,
Petitioners,

v.

INTERSTATE COMMERCE COMMISSION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF

WILLIAM J. SCOTT
Attorney General of the
State of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

HERCULES F. BOLOS
Special Assistant Attorney General

MILTON McCLURE
113 State Street
Beardstown, Illinois 62618

THOMAS F. McFARLAND, JR.
20 North Wacker Drive
Chicago, Illinois 60606

GORDON P. MacDOUGALL
1100 17th Street, N.W.
Washington, D.C. 20036

Attorneys for Petitioners

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Petitioners make this reply to the Opposition by the Government ("S.G.") and by The Baltimore and Ohio Railroad Company ("B&O"), in accordance with Rule 24(4).[1]

The Solicitor General does not correctly perceive the question presented by our petition. The question presented is not

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[1] The I.C.C.'s decision is now reported. *Baltimore and Ohio R. Co. Abandonment,* 348 I.C.C. 761 (Nov. 3, 1975).

whether the I.C.C. should have consolidated B&O's three applications to abandon the three segments of its 228-mile line running from Beardstown to Shawneetown, Ill. (S.G. Br., p. 2). Instead, the issue before the court is whether the I.C.C. may authorize the abandonment of the 43.7-mile "northern" segment (Beardstown-Coal Shaft), without evidence and findings concerning the impact of such abandonment upon the continued viability of the other segments. (Pet., p. 2). We urge the Court to determine whether the consideration governing "public convenience and necessity" for a railroad's multiple applications for motor carrier rights, also governs a railroad's multiple abandonment applications for a branch line. Cf. *American Trucking Assns. v. U.S.*, 326 U.S. 77, 85 (1945). The answer is important.[2]

B&O argues that the I.C.C. "affirmed" the ALJ's decision to deny B&O's application to abandon the "southern"

[2] The Government does not dispute the importance of the current "segmentation" approach of the I.C.C. to line abandonments. (S.G. Br., pp. 5-7). Of course, the fact that "most" (not otherwise defined) northern segment traffic also moves on the Indianapolis line does not measure the importance of the northern segment's total traffic and operational value to the middle and southern segments.

segment. (B&O Br., p. 5, fn. 2). This is incorrect, as the I.C.C. would place a weak and untried "short-line" in the stead of B&O, thus allowing B&O to abandon operations, without future obligation (Pet., 49a).

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General of the State of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

HERCULES F. BOLOS
Special Assistant Attorney General

MILTON McCLURE
113 State Street
Beardstown, Illinois 62618

THOMAS F. McFARLAND, JR.
20 North Wacker Drive
Chicago, Illinois 60606

GORDON P. MacDOUGALL
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